

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAY 16 2016

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cr. No. 15-cr-04533-JCH

VANESSA COHOE
aka **VANESSA VICENTI**,

Defendant.

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **VANESSA COHOE**, aka **VANESSA VICENTI**, and the Defendant's counsel, Robert Gorence:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to plead not guilty, or having already so pleaded, to persist in that plea;
 - b. to have a trial by jury; and
 - c. at a trial:
 - 1) to confront and cross-examine adverse witnesses,

- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Count 1 of the Indictment, charging a violation of 18 U.S.C. § 666(a)(1)(A), that being Theft Concerning Programs Receiving Federal Funds.

SENTENCING

4. The Defendant understands that the maximum penalty provided by law for this offense is:
- a. imprisonment for a period of not more than 10 years;
 - b. a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
 - c. a term of supervised release of not more than 3 years to follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and
 - e. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties are aware that the Court will decide whether to accept or reject this plea agreement. The Court may defer its decision as to acceptance or rejection until there has been an opportunity to consider the presentence report. Pursuant to Federal Rule of Criminal Procedure 11(c)(5), if the Court rejects this plea agreement, the defendant shall have the right to withdraw the defendant's plea of guilty.

7. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the indictment that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

I was employed as a purchasing agent for the Jicarilla Apache Nation from February 2007 to June 2011, in Dulce, Rio Arriba County, New Mexico. In that capacity, I was given access to and allowed to use the Tribe's Sam's Club credit card for authorized tribal purchases. But from January 2010 to May 2011, I made unauthorized purchases

using the Tribe's Sam's Club credit card of gift cards, alcohol, groceries, clothes, and cosmetics for myself and my family. To prevent the Tribe from discovering my unauthorized charges, I intercepted the Sam's Club bills sent to the Tribe and then modified my unauthorized purchases on the bills to appear like authorized charges to induce payment from the Tribe's billing department with funds owned by and under the custody and control of the Jicarilla Apache Nation. Over the course of eighteen months, I made unauthorized purchases, and induced the Tribe's payments, in the amount of approximately \$16,550. I embezzled approximately \$12,500 of that total amount during the time period from December 15, 2010 to May 19, 2011. I was eventually suspended on May 19, 2011, after the Tribe discovered my theft of its funds. And after a full investigation by the Tribe, I was terminated on June 14, 2011.

I also acknowledge that if this case were to proceed to trial, the United States would be able to prove that the Jicarilla Apache Nation is an organization that received, during the one-year period that spanned the course of my fraudulent conduct, over \$10,000 in benefits under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, and other form of Federal assistance.

9. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime to which the Defendant is pleading guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

RECOMMENDATIONS

10. The United States and the Defendant recommend as follows:
 - a. The Defendant and the United States have made an AGREEMENT pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that a specific sentence of probation of at least one year but not more than five years is the appropriate sentence in this case. This agreement takes into account the Defendant's acceptance of responsibility, with no further reduction to occur. The remaining components of the Defendant's sentence, including but not limited to the imposition of a fine, shall be imposed by the Court after the presentation of evidence and/or argument by the parties.
 - b. If the Court accepts the plea agreement, it must inform the Defendant that the agreed upon disposition will be included in the judgment, and the Court is bound by the terms of the plea agreement once the Court accepts the plea agreement.

DEFENDANT'S ADDITIONAL AGREEMENT

11. The Defendant recognizes that the United States may demonstrate and argue at sentencing that I made unauthorized purchases and induced the Tribe's payments of approximately \$43,947.99, including \$23,039.23 during the time period from December 15, 2010, to May 19, 2011.
12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The

Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

13. Except under circumstances where the Court, acting on its own, rejects this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

14. The Defendant recognizes that this plea agreement has already conferred a benefit on the Defendant. Consequently, in return for the benefit conferred on the Defendant by entering into this agreement, the Defendant agrees not to seek a downward departure or variance from the specific sentence of probation of at least one year but not more than five years as agreed to by the parties pursuant to Rule 11(c)(1)(C) of the Federal rules of Criminal Procedure. If the Defendant, in violation of this paragraph, should nevertheless seek a downward departure or variance, including a departure or variance from the guideline Criminal History Category, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on all charges before the Court.

RESTITUTION

15. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A.

16. In this case, the Defendant agrees to pay restitution in the total principal amount of \$ 5,000, that being the difference between the total unauthorized purchases and the amount that the Jicarilla Apache Nation has already been reimbursed by its insurer, which is immediately payable to the United States District Court Clerk. The Defendant understands that any payment schedule the Court may impose is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. The United States Probation Office, or, after the Defendant completes any term of supervised release the Court imposes, the United States Attorney's Office for the District of New Mexico, may revise the monthly payment amount depending on the Defendant's financial circumstances. No later than July 1st of each year after sentencing, until restitution is paid in full, the Defendant shall provide the Asset Recovery Unit, United States Attorney's Office, P.O. Box 607, Albuquerque, NM 87103, (1) a completed and signed financial statement provided to the Defendant by the United States Attorney's Office and/or the United States Probation Office, and (2) a copy of the Defendant's most recent tax returns.

IMMIGRATION REMOVAL AND OTHER IMMIGRATION CONSEQUENCES

17. The Defendant recognizes that pleading guilty may have consequences with respect to the Defendant's immigration status if the Defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which the Defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including the Defendant's attorney or the district court, can predict to a certainty the effect of the Defendant's conviction on the Defendant's immigration status. The Defendant nevertheless affirms that the Defendant wants to plead guilty regardless of any immigration consequences that the Defendant's

plea may entail, even if the consequence is the Defendant's automatic removal from the United States.

WAIVER OF APPEAL RIGHTS

18. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction and any sentence, including any fine, imposed in conformity with this Fed. R. Crim. P. 11(c)(1)(C) plea agreement, as well as any order of restitution entered by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issue of defense counsel's ineffective assistance.

GOVERNMENT'S ADDITIONAL AGREEMENT

19. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing, the United States will move to dismiss Counts 2 through 9 of the Indictment.
- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

20. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

21. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement and any addenda). The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

22. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

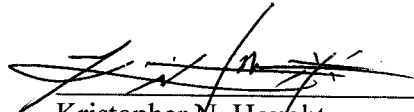
23. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

24. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 16th day of May, 2016.

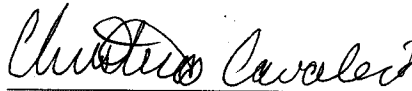
DAMON P. MARTINEZ
United States Attorney



Kristopher N. Houghton
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

(Signatures continue on next page).

I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.



Robert Gorence/Christina Cavaleri
Attorney for the Defendant

I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.



Vanessa Conoe aka Vanessa Vicenti
Defendant